

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8751 OF 2006

Harishchandra Sambhaji Bajbalkar & Ors..... Petitioners
V/s
Bapu Sambhaji Bajbalkar..... Respondent.

Mr.Bhushan A. Walimbe, Adv. For the petitioners.

Mr.T.S.Ingale, Adv. For the respondent Nos. 1 & 2.

CORAM: A.P.DESHPANDE, J.

22/10/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

This Court while issuing notice directed the petitioners to deposit a sum of Rs.3,500/- being amount of costs payable to the 1st respondent and subject to such deposit ad-interim relief in terms of prayer clause (c) came to be granted. The respondent has appeared after service of notice and the matter is taken up for final hearing. The present petitioners are original defendants in civil suit No.36/03 filed by respondent No.1. The petitioners came to be served with the suit summons on 17.10.03. Even before expiry period of 90 days an order of no written statement came to be passed on 9.12.03 and the matter proceeded further. The plaintiff filed affidavit of examination in chief on 27.4.04. The present petitioners moved an application on 28.6.04 for setting aside no

written statement order and also along with said application placed on record duly verified written statement so also filed reply to Ex.5-Application claiming temporary injunction. The rejection of said application for setting aside no written statement order and refusal by trial Court to consider written statement as being validly tendered the present writ petition has been filed. Perusal of the order passed by trial Court reveals that the Court proceeded on an assumption that order 8 rule 1 is mandatory in nature and thus no written statement can be tendered after expiry of 90 days' period. Being of the view that the period of 90 days cannot be extended the trial Court rejected the application. Having regard to the nature of the dispute I am of the considered view that ends of justice would be met by permitting the petitioners to contest the suit on merit more so when they have tendered the written statement way back on 28.6.04. No doubt for the inconvenience caused to respondent No.1 needs to be adequately compensated. Hence I proceed to pass the following order:

The impugned order dated 3.10.06 passed by the Civil Judge, Junior Division, Islampur is quashed and set aside. The no written statement order passed against the petitioner is also quashed and set aside. Written statement tendered by the petitioners on 28.6.04 if taken on record be treated as validly tendered and be considered for decision of the suit on merit. If the same is not taken on record the learned advocate is permitted to tender the same and place on record. This order is subject to further payment of costs of Rs.1,500/- to be paid by the petitioners to respondent No.1 which

amount shall be in addition to amount deposited by respondent No.1 pursuant to order dated 3.5.07. Amount of Rs.1,500/- shall be deposited in trial Court within a period of four weeks from today. Respondent No.1 be permitted to withdraw the sum of RS.3,500/- which is already deposited in this Court by the petitioners. Rule made absolute above terms.

22.10.07